

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

JAMAAL A. MCNEIL,

Plaintiff,

v.

CITY OF OMAHA, OMAHA
POLICE DEPARTMENT, T.
RINGHOFF and J. WARNOCK,
Defendants.

8:07CV143

**MEMORANDUM
AND ORDER**

This matter is before the court on Plaintiff's Motion for Leave to Proceed in Forma Pauperis (filing no. [88](#)) and Motion for Mandamus (filing no. [89](#)). The court dismissed this matter with prejudice and entered Judgment on August 26, 2008. (Filing Nos. [53](#) and [54](#).) Since then, the Eighth Circuit denied several Petitions for Writ of Mandamus filed by Plaintiff. (See Filing Nos. [71](#), [78](#) and [83](#).)

As set forth in the Prison Litigation Reform Act, a prisoner cannot:

[B]ring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

[28 U.S.C. §1915\(g\)](#).

Plaintiff brought the following three cases that were dismissed because they failed to state a claim upon which relief may be granted:

- *McNeil v. Public Defender Office*, No. 4:06CV3204 (D. Neb.), dismissed on September 5, 2006. (Case No. 4:06CV3204, Filing Nos. 5 and 6.)
- *McNeil v. City of Omaha, et al.*, No. 8:07CV145 (D. Neb.), dismissed on May 16, 2007. (Case No. 8:07CV145, Filing Nos. 12 and 13.)
- *McNeil v. City of Omaha, et al.*, No. 8:07CV143 (D. Neb.), dismissed on August 26, 2008. (Case No. 8:07CV143, Filing Nos. 53 and 54.)

Plaintiff has not shown that he faces an imminent danger of serious physical injury, nor has he paid the filing fee for a Petition for Writ of Mandamus. *See Fed. R. App. P. 21(a)*. Accordingly, the court will deny Plaintiff's Motion for Writ of Mandamus without prejudice to reassertion before the Eighth Circuit Court of Appeals. *See In re Tyler, 110 F.3d 528, 529 (8th Cir. 1997)* (prisoner filing petition for writ of mandamus who was ineligible for IFP status because of PLRA's "three strikes" provision, 28 U.S.C. § 1915(g), was ordered by the Eighth Circuit to pay the required filing fee within 15 days or else the petition would be dismissed with prejudice for failure to prosecute).

IT IS THEREFORE ORDERED that:

1. Plaintiff's Motion for Leave to Proceed in Forma Pauperis (filing no. 88) and Motion for Mandamus (filing no. 89) are denied without prejudice to reassertion before the Eighth Circuit Court of Appeals.

2. The Clerk of the court is directed to send a copy of this order to the Eighth Circuit Court of Appeals.

DATED this 6th day of October, 2011.

BY THE COURT:

Richard G. Kopf

United States District Judge

*This opinion may contain hyperlinks to other documents or Web sites. The U.S. District Court for the District of Nebraska does not endorse, recommend, approve, or guarantee any third parties or the services or products they provide on their Web sites. Likewise, the court has no agreements with any of these third parties or their Web sites. The court accepts no responsibility for the availability or functionality of any hyperlink. Thus, the fact that a hyperlink ceases to work or directs the user to some other site does not affect the opinion of the court.